UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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MY FIRST BIKE PRODUCTIONS, INC.,

Plaintiff,

v.

MYSPACE, INC., a Delaware Corporation, d/b/a Myspace.com, DIRECTV, INC., a California corporation, FOX INTERACTIVE MEDIA, INC., a Delaware corporation,

Defendants.

CASE NO. ______________

DEFENDANTS' NOTICE OF REMOVAL

1:07-cv-0459-RLY-TAB

DEFENDANTS' NOTICE OF REMOVAL

Defendants, MySpace, Inc. ("MySpace"), DIRECTV, Inc. ("DIRECTV"), and Fox Interactive Media, Inc. ("FIM") (jointly, "Defendants"), remove this action pursuant to 28 U.S.C. Sections 1331, 1332, 1338, 1441, and 1446. Defendants base this removal on (1) the Court's diversity jurisdiction over actions between citizens of different states where the amount in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and (2) the Court's federal question jurisdiction.

THE ACTION

1. On March 7, 2007, plaintiff My First Bike Productions, Inc. ("First Bike") filed this lawsuit against Defendants in the Marion County Superior Court under Cause No. 49D01-0703-PL-009141 (the "Action").

2. FIM was served (by mail) with a copy of the Complaint on March 16, 2007. DIRECTV was served (by mail) with a copy of the Complaint on March 22, 2007. MySpace

was served (by mail) on April 10, 2007. Pursuant to 28 U.S.C. Section 1446(b), this Notice must be filed within thirty days after the receipt by Defendants of the Complaint, i.e., no later than April 16, 2007 for FIM, no later than April 22, 2007 for DIRECTV, and no later than May 10, 2007 for MySpace. Thus, the Notice is timely filed.

3. Copies of all process, pleadings, and orders served upon Defendants are attached hereto as Exhibit 1.

DIVERSITY JURISDICTION

4. At the time this action was filed and as of the date of this Notice, defendant MySpace was and is a corporation organized under the laws of the state of Delaware with its principal place of business and executive offices located in Beverly Hills, California.

5. At the time this action was filed and as of the date of this Notice, defendant DIRECTV was and is a corporation organized under the laws of the state of California with its principal place of business and executive offices located in El Segundo, California.

6. At the time this action was filed and as of the date of this Notice, defendant FIM was and is a corporation organized under the laws of the state of Delaware with its principal place of business and executive offices located in Los Angeles, California.

7. Upon information and belief, at the time this action was filed and as of the date of this Notice, plaintiff First Bike is a corporation organized under the laws of the state of Indiana with its principal place of business and executive offices located in Indianapolis, Indiana.

8. Accordingly, there is complete diversity between plaintiff and defendants at the time this action was commenced and at the time of the filing of this Notice.

9. Upon information and belief, and as is facially apparent from the facts alleged in the Complaint, the amount in controversy in this action exceeds the sum of $75,000, exclusive of

interest and costs. First Bike seeks a variety of damages from defendants including, but not limited to, supposedly unpaid compensation for allegedly plagiarizing First Bike's ideas and concepts. *See* Cplt. at ¶¶ 17-18. Plaintiff also seeks treble damages from each of the three defendants. *See* Cptl. at ¶¶ 33-34. As such, it is reasonable to conclude that First Bike's claims exceed $75,000.

FEDERAL QUESTION JURISDICTION

10. This Court has original and exclusive jurisdiction over the Action pursuant to 28 U.S.C. Sections 1331 and 1338 because the Action was brought by First Bike to enforce purported rights arising under the United States Copyright Act. *See* 28 U.S.C. Section 1338(a) ("The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to … copyrights …. Such jurisdiction shall be exclusive of the courts of the states in … copyright cases.").

11. Specifically, First Bike repeatedly alleges in its Complaint that it is the owner and author of an "original work" and that Defendants unlawfully "plagiarized" First Bike's "concepts, ideas, storylines, . . . and the expression of those concepts, ideas, and storylines . . . ." *See* Cplt. at ¶¶ 27-31. These allegations assert violations of the exclusive rights of a purported copyright owner, and clearly fall within the subject matter of the Copyright Act. *See* 17 U.S.C. §§ 106 (1)-(5); 501.

12. The fact that First Bike disguises its copyright claim as a claim for "Plagiarism" does not remove it from the exclusive jurisdiction of the federal courts. *See* 17 U.S.C. § 301(a); *Caldwell-Gadson v. Thomson Multimedia, S.A.*, 2001 WL 1388052 (S.D. Ind. 2001). The Copyright Act exclusively governs a claim if (1) the work to which the claim is being applied falls within the scope of copyright subject matter, and (2) the claim seeks to vindicate legal or

equitable rights equivalent to the bundle of exclusive rights already protected by copyright law. *Briarpatch Ltd., L.P. v. Phoenix Pictures, Inc.*, 373 F.3d 296, 305 (2nd Cir. 2004); *Rosciszewski v. Arete Associates, Inc.*, 1 F.3d 225, 229 (4th Cir. 1993). Whether Defendants have used or are using any copyrightable subject matter belonging to First Bike, and the remedies available for the allegedly unauthorized use of such works, are questions of substantive copyright law that require an analysis of the United States Copyright Act. Such questions must be resolved by a federal court inasmuch as copyright claims are within the exclusive jurisdiction of the federal courts. 28 U.S.C. § 1338(a); *I.A.E., Inc. v. Shaver*, 74 F.3d 768, 774 n.4 (7th Cir. 1996) ("Federal courts have original and exclusive jurisdiction over copyright actions."). Thus, removal to this Court is appropriate pursuant to 28 U.S.C. § 1441.

13. Written notice of the filing of this Notice of Removal will be given to First Bike as required by rule.

14. A true and accurate copy of this Notice of Removal will be filed with the Clerk of the Marion Superior Court.

15. Defendants, by their undersigned counsel, each consent to and join in this Notice of Removal in all respects.

16. Defendants properly removed this Action to this Court pursuant to 28 U.S.C. Section 1441(a) because the United States District Court for the Southern District of Indiana, Indianapolis Division is the district in which the Action is pending.

17. Defendants hereby reserve, and do not waive, any objection they may have to service, jurisdiction or venue, and any and all other defenses or objections to the Action.

WHEREFORE, Defendants pray that this action be removed to this Court and proceed under the Federal Rules of Civil Procedure and the laws of the United States and for all other proper relief.

Date: April 13, 2007

Respectfully submitted:

Craig E. Pinkus, Atty. No. 5749-49
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Attorneys for Defendants, MYSPACE, INC., DIRECTV, INC., and FOX INTERACTIVE MEDIA, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served via first class U.S. Mail, postage prepaid this 13th day of April, 2007 to:

Mark R. Waterfill
Michael A. Lang
Dann Pecar Newman & Kleiman, P.C.
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